

SURREBUTTAL TESTIMONY OF RONALD J. BINZ
ON BEHALF OF
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE AND
SOUTHERN ALLIANCE FOR CLEAN ENERGY
DOCKET NOS. 2017-370-E; 2017-305-E; 2017-207-E

1 **I. Introduction and Summary of Testimony**

2 **Q: What is your name and address?**

3 A: My name is Ronald J. Binz. My business address is 333 Eudora Street, Denver,
4 Colorado 80220-5721.

5 **Q: Are you the same Ronald J. Binz who previously filed testimony in this**
6 **proceeding?**

7 A: Yes. I filed direct testimony on behalf of the South Carolina Coastal Conservation
8 League (“CCL”) and the Southern Alliance for Clean Energy (“SACE”).

9 **Q: What is the purpose of your surrebuttal testimony?**

10 A: The purpose of my surrebuttal testimony is to respond to portions of the rebuttal
11 testimony filed by South Carolina Electric & Gas Company, including the testimony of
12 witnesses Ellen Lapson, Iris N. Griffin, John H. Raftery, and Robert M. Blue.

13 **II. Use of Securitization to Lower Costs for Ratepayers**

14 **Q: SCE&G witness Ellen Lapson points out that securitization is not an**
15 **available option at the present time, and that various factors could delay or rule out**
16 **a securitization transaction. How do you respond?**

17 A: Ms. Lapson is correct that certain conditions must be met before securitization
18 can be used. Most importantly, the South Carolina legislature must act to establish

1 authority for the Commission to use securitization of the stranded assets and to give
2 investors the confidence that the securitization bonds will be repaid on the agreed
3 schedule. With the legislature out of session, it is not possible to enact securitization
4 legislation before this docket is closed. However, there is another option that Ms. Lapson
5 ignores. The Commission could make its ruling on the merger transaction contingent
6 upon the use of securitization for certain stranded costs when and if it becomes available
7 in the future.

8 As discussed in my direct testimony, securitization will mean hundreds of
9 millions of dollars savings for customers. It is important to note that securitization need
10 not happen at the same time as the merger. The same savings can be obtained by
11 refinancing some amount of the stranded V.C. Summer costs on SCE&G's books after
12 the merger closes, assuming the merging parties accept such a condition applied by the
13 Commission at the front end.

14 As a former regulator, I am not concerned about the mechanics of such a
15 transaction: following merger approval with this condition, it will be up to the Legislature
16 to pass enabling legislation and, if it desires, require Dominion/SCE&G to implement the
17 Commission's securitization merger condition. Although securitization may not be
18 Dominion's first choice, the Commission can protect ratepayers with this merger
19 condition and allow the merging parties to decide whether to accept the condition. If the
20 Legislature acts on securitization in the future, the transaction can be undertaken at that
21 time, and rates could be lowered to reflect the lower-cost financing.

1 **Q: SCE&G Witness Lapson also argues that the securitization transaction that**
2 **you recommend is not consistent with the conditions for a merger with Dominion. Is**
3 **this a relevant consideration, and if so, do you agree?**

4 A: On page 40 of her rebuttal testimony, Ms. Lapson states that the securitization
5 transaction I recommend is “inconsistent with the conditions for a merger...” However,
6 she fails to cite any supporting language in the agreement, because there is none. What
7 she may mean is that that securitization was not *contemplated* by the agreement, which is
8 probably true.

9 Importantly, the Commission is not bound by the merger agreement, or what was
10 contemplated by the merger agreement. It is well understood that Commission may
11 apply pre-conditions to its merger approval to ensure that the merger is in the public
12 interest. If the Commission finds that the transaction must be contingent upon the use of
13 securitization when that option becomes available, the merger parties must decide
14 whether this provision gives one or both parties a basis for withdrawing from the merger
15 agreement and whether to exercise such right of withdrawal.

16 **Q: Ms. Lapson also argues that various factors could delay or rule out a**
17 **securitization transaction. First, how do you respond to her speculation about a**
18 **possible referendum or ballot initiative or future legislative action.**

19 A: Ms. Lapson argues on page 41 of her Rebuttal Testimony that there are legal
20 hurdles to securitization, the first being that voters might overturn the financing
21 agreement through referendum. I am not an attorney; neither is Ms. Lapson. But it is my
22 understanding that South Carolina law does not permit statewide ballot initiatives or
23 referenda, and therefore it appears there is no basis for this concern.

1 Indeed, this issue was examined by Moody's in its analysis of a \$369 million
 2 securitization undertaken in 2017 by Long Island Power Authority. Quoting from the
 3 Moody's note:

4 New York does not have a referendum or initiative process by
 5 which the securitization law may be challenged. Therefore, the
 6 only way for the securitization law to be changed would be
 7 through a legislative action which would be subject to the state
 8 pledge.¹

9 Ms. Lapson's second legal "hurdle" is her concern that a future legislature might
 10 overturn the law under which securitization would occur, "given the legislature's
 11 abandonment of the BLRA, which it enacted in 2007."² This possibility was also
 12 downplayed by Moody's in its LIPA analysis, citing the self-defeating nature of
 13 legislative action to interfere with a large bond backed by state legislation:

14 The risk that the State of New York would take legislative action that
 15 compromises its state pledge to the significant detriment of bondholders is
 16 remote because state impairment would give rise to claims under state and
 17 federal laws prohibiting government impairment of contracts and taking of
 18 private property without reasonable reimbursement under state and federal
 19 "taking" claims. The irrevocable and unconditional nature of the financing
 20 order mitigates any concern that it could be altered.³

¹ Moody's Investor Service. "Utility Debt Securitization Authority Restructuring Bonds, Series 2017 Pre-Sale - Long Island Power Authority-sponsored utility cost recovery bonds." Credit Opinion, (September 17, 2017) p.10. Available at: <https://www.lipower.org/wp-content/uploads/2018/06/2017.10.13-Moodys-UDSA-Pre-Sale-Report.pdf>

² Id. at 5.

³ Id. at 3.

1 **Q: Ms. Lapson then lays out a litany of other factors. How have other**
2 **Commissions, legislatures and utilities addressed these factors to make**
3 **securitization work?**

4 A: Ms. Lapson lists several more conditions that must be met for securitization to
5 happen. All of these are familiar to states that are using securitization, and all of these
6 issues have been addressed successfully many times over.

7 Ms. Lapson first identifies the requirements for legislation. She is correct that
8 there are exacting financial conditions that Wall Street must see in legislation in order to
9 conclude that these bonds deserve a favorable credit rating. Legislatures in many states
10 have passed such formulaic laws so that there is no longer any doubt about the necessary
11 ingredients. If the legislature acts to pass securitization legislation in South Carolina,
12 there is no reason to think it would include Ms. Lapson's speculative "bells or
13 flourishes," that would render the new law ineffective.

14 Next, Ms. Lapson notes that the Commission must oversee the collection and
15 disbursement of funds collected to pay off the bonds, including a true-up mechanism.
16 She is correct, of course. But this is the same thing the Commission does every day with
17 pass-through mechanisms like SCE&G's fuel adjustment clause. Again, this requirement
18 on the Commission is not a barrier to securitization.

19 Finally, Ms. Lapson expresses her concern that the Commission's order may be
20 appealed, interfering with potential securitization. I have two responses. First, setting
21 securitization aside, any appeal of a Commission order approving the merger would also
22 affect the merger itself. The merger partners were fully aware of this potential, yet they
23 persisted with the application. Second, if Ms. Lapson is correct that an appeal would

1 prevent securitization from moving forward, this simply means that securitization of the
2 stranded costs would proceed only after the appeal is resolved. As I explained earlier,
3 securitization can be applied at any point after the stranded asset is identified and booked.
4 The eventual bonded amount might be smaller if consumer rates in the interim collect
5 amortization and return on the regulatory asset for a year or two, but the principle is the
6 same: securitization could be applied to the then-current regulatory asset.

7 **Q: Ms. Lapson also questions whether there is an assured market for the bonds**
8 **that would need to be sold. Is that a valid concern?**

9 A: Ms. Lapson is right, of course, that it is important that there be a market for utility
10 securitization bonds. But nothing in the recent history of securitization would lead to the
11 conclusion that this is a barrier. In my direct testimony, I provided a listing of 65
12 securitization transactions over the past 21 years. With one exception, the rating agencies
13 gave these bonds the equivalent of a Moody's AAA rating. (S&P gave an Entergy New
14 Orleans securitization bond its second highest rating of Aa1.) These are high-quality
15 bonds and I am aware of no circumstance where an offering of utility securitization bonds
16 has been unfilled or withdrawn due to undersubscription.

1 **Q: Ms. Lapson attempts to summarize the conditions and steps that would be**
2 **necessary for the issuance of securitization bonds in this circumstance. Has she**
3 **correctly identified those conditions and steps?**

4 A: Yes. She has correctly described the elements needed for the issuance of utility
5 securitization bonds. None of these conditions or steps is a barrier, though: 17 states
6 have successfully used this financing mechanism, some of them multiple times. Here is
7 my response to each of her points:

- 8 1) It would be prudent to undertake a legal analysis, but South Carolina law
9 appears not to provide for voter initiatives.
- 10
11 2) Detailed model legislation exists that has been developed to implement the
12 strict requirements that will secure Wall Street's support for these bonds.
- 13
14 3) As Moody's points out, there should be no concern about state legislatures
15 reneging on the "state pledge" to repay these bonds. Such an attempt would
16 be answered with a "takings" legal claim and likely the claim of
17 impermissible retroactive legislation. and.
- 18
19 4) The actions required of the Commission in overseeing the repayment of these
20 bonds are familiar to regulators; they are the exact actions that regulators
21 undertake today with cost tracking mechanisms.
- 22

23 **Q: Finally, Ms. Lapson claims that securitization is a "red herring" that**
24 **distracts from the real issues in this proceeding. Why is securitization relevant in**
25 **this proceeding?**

26 A: This proceeding is about three main subjects: i) a proposed merger; ii) the
27 prudence of utility investment decisions; and iii) electric rates that consumers pay. These
28 issues are tightly intertwined. Securitization is a financing technique that can take
29 hundreds of millions of rate payer dollars off the table, making resolution of the key
30 issues much easier for the stakeholders. As Moody's has noted, securitization can be

1 useful to utilities in these circumstances, when the utility faces possible disallowance of
2 an investment; this is precisely true of portions of the V.C. Summer plant investment.

3 I'm surprised Ms. Lapson terms securitization a "red herring." Instead, it can be a
4 major element of a Commission decision on the merger. Perhaps she simply means that
5 it cannot be used without the requisite legislation. As explained earlier, the Commission
6 could require securitization of some portion of the V.C. Summer assets as a contingent
7 condition of merger approval. Beginning in its next session, the legislature could
8 determine whether South Carolina will join 17 other states that use securitization to lower
9 customer bills.

10 **III. Clean Energy Investment, State Policy and the Public Interest**

11 **Q: SCE&G witness John H. Raftery testifies at length to the Company's**
12 **practices with regard to renewable energy and the regulatory process for**
13 **procurement of distributed energy resources. Do those existing practices and**
14 **regulatory process preclude the Commission from adopting your recommendation**
15 **that the Company initiate a competitive bidding process for resource procurement?**

16 **A:** No. In my view, this merger is an opportunity for accelerating South Carolina's
17 deployment of clean energy resources. CCL and SACE believe that the current pace
18 could easily be speeded up. Other states in the Southeast (Florida, Georgia, North
19 Carolina) are moving faster than South Carolina by most measures. South Carolina has
20 risen in the national rankings, but it still needs to focus more effort on solar generation
21 and energy efficiency.

22 **Q: Dominion witness Robert M. Blue testifies to Dominion's commitment to**
23 **energy efficiency and renewable energy resources but says that such matters are**

1 **beyond the scope of this proceeding. Witness Raftery also points to the State**
2 **Energy Plan and the ongoing stakeholder process to implement that plan, then**
3 **states that it is not appropriate to “short-circuit” that process in this proceeding.**
4 **Why is it appropriate for the Commission to impose conditions on the merger**
5 **related to energy efficiency and renewable energy resources?**

6 A: As I explained in my direct testimony, this merger provides the Commission with
7 an opportunity to impose conditions on the merging parties to ensure that the merger is in
8 the public interest. Such public interest considerations are clearly not beyond the scope
9 of this proceeding. On the contrary, they are core to the Commission’s responsibilities in
10 a merger review.

11 Possibly the clearest statement of public interest goals in the energy realm is
12 found in the State Energy Plan, which repeatedly commits to more diverse energy
13 resources, more renewable energy and greater energy efficiency. I have no doubt that
14 progress is being made on implementing the State Energy Plan. But the results could
15 come faster, especially if, as I recommended in my direct testimony, the Commission
16 requires SCE&G to conduct an open, transparent, competitive solicitation for any new
17 energy resources that may be needed to meet the Company’s energy and capacity needs.
18 Such a process would offer renewable energy and energy efficiency the opportunity to
19 compete fairly with traditional fossil resources.

20 Renewable energy and energy efficiency are low-cost, low-risk resources that can
21 help customers save money on their bills. Energy efficiency, in particular, can provide
22 bill relief to customers struggling to pay their bills after years of rate increases due to the
23 failed V.C. Summer project. Yet SCE&G’s energy efficiency performance lags far

1 behind most of its peers: according to the American Council for an Energy-Efficient
2 Economy (ACEEE), SCE&G ranks 39th out of the nation's 51 largest utilities on its
3 efficiency program performance, and the Company is one of the lowest-ranked utilities in
4 the Southeast. Dominion scores even worse—50th out of 51.⁴

5 CCL and SACE do not wish to “short-circuit” the ORS effort. Instead we
6 respectfully ask the Commission to provide a greater motivation for the combined
7 Company to lead the way on energy efficiency and renewable energy in the state.

8 **Q: Finally, Mr. Raftery states that it is not necessary for the Commission to**
9 **require SCE&G to solicit energy resources through a request for proposals, as you**
10 **recommend, because Commission Order No. 2005-2 already requires SCE&G to**
11 **issue an RFP for any non-based load generation additions. How do you respond?**

12 A: Again, I am not an attorney. However, as a former public utilities commissioner
13 and energy consultant, I have written many orders and read many more from across the
14 country. Although the Commission did indeed initiate a new generic docket to explore
15 the use competitive bidding for resource selection to implement its Order No. 2005-2, the
16 order that resulted from that generic proceeding (Order No. 2007-626) requires an RFP
17 process that lacks several essential elements of the process that I recommended in my
18 direct testimony: 1) the RFP process is required only for new peaking generation; 2) the
19 Commission's order refers to “generation,” implying that only supply-side resources may
20 be eligible to bid into the process; and 3) an independent evaluator is not required. In
21 contrast, the all-source competitive solicitation process I recommend would have the
22 following features: 1) it would apply to any capacity and/or energy need, not merely a

⁴ Relf, Grace, et. al., ACEEE, 2017 Utility Energy Efficiency Scorecard at 17, Table 6 (2017), available at <http://aceee.org/research-report/u1707>.

1 need for resources to meet peak demand; 2) it would be open to both demand- and
2 supply-side resources; and 3) an independent evaluator would be required. Each of these
3 elements is critical to ensure a robust, transparent process that results in selection of the
4 least-cost resource.

5 There are great advantages in using competitive bidding in a “vertically
6 integrated” market state like Colorado or South Carolina. The Commission is able to
7 assess the cost of new purchased energy and capacity, compared to utility-owned
8 facilities; the competitive bidding process will identify new technologies or approaches
9 available to the state that would not otherwise be found; rigorous competition among
10 suppliers will assure that the Commission can obtain the lowest cost, consistent with the
11 needs of the utility and the state. This last feature is especially important today, when
12 costs for renewable energy resources are falling fast. In Colorado, Xcel Energy routinely
13 gets bids for renewable resources that total ten or fifteen times the capacity sought. As a
14 result, those resources are obtained at rock-bottom prices.

15 **Q: Does this conclude your testimony at this time?**

16 **A:** Yes.